SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/40UB/LAM/2007/0004

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 24 OF THE LANDLORD AND TENANT ACT 1987 FOR AN ORDER APPOINTING A MANAGER:

Property:	Bishops Mill Apartments, West Street, Wells, Somerset BA5 2HH
Applicants:	**ERNEST JOHN DAVID WARNE** and **IRENE WARNE** (Flat No. 2)
Respondent:	Bishops Mill Apartment (Wells) Limited
Appearances:	The Applicants and for the Applicants: Mr. Roland Callaby of Harris & Harris For the Respondent: Mr. Kevin Newton
Also in Attendance:	Mr. James Tarr of Andrews Letting & Management Limited Mrs. Ellie Doe of Simply Property Management Company Limited Mr. Warne, Junior
Date of Application:	16 November, 2007
Date of Directions:	7 December, 2007
Date of Inspection:	14 February, 2008
Date of Hearing:	14 February, 2008
Venue:	The Indictment Room, The Town Hall, Wells City Council, Market Place, Wells, Somerset, BA5 2RB
Date of Tribunal Decision:	14 February, 2008

Members of the Leasehold Valuation Tribunal:

Mr. T. D. George (Lawyer Chairman)
Mr. J. S. McAllister, F.R.I.C.S. (Valuer Member)
Mrs. M. Hodge, M.R.I.C.S. (Valuer Member)

DECISION:

Introduction:

The Applications considered by the Tribunal were as follows:

(a) Under Section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act") the Appointment of a Manager of Bishops Mill Apartments, West Street, Wells, Somerset

and

(b) Under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for an Order that the Respondent's costs incurred in connection with these proceedings should not be recoverable as service charges

In respect of these applications the Tribunal made the following determinations for the reasons set out below.

APPOINTMENT OF A MANAGER AND RECEIVER:

IT IS ORDERED:-

1. That Andrews Letting & Management Limited ("the Manager") be appointed Manager and Receiver of the Property with effect from 15 February 2008.
2. That the Manager shall manage the Property in accordance with:-
   a) The respective Obligations of the landlord and tenants under the various leases by which the flats at the Property are demised and in particular, but without prejudice to the generality of the foregoing, with regard to the repair decorations provision of services to and insurance of the Property and
   b) In accordance with the duties of a manager set out in the Service Charge Residential Management Code ("the Code") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to Section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
3. That the Manager shall receive all sums whether by way of ground rent insurance premiums payments of service charges or otherwise arising under the said leases.

4. That the Manager shall account forthwith to the freeholder for the time being of the Property for the payment of ground rent received by it and shall apply the remaining amounts received by it (other than those representing fees hereby specified) in the performance of the covenants of the landlord contained in the said leases.

5. That the Manager shall make arrangements with the present insurers of the Property to make any payments due under the insurance policy presently effected by the Respondent to the Manager.

6. That the Manager shall be entitled to the remuneration (which for the avoidance of doubt shall be recoverable as part of the Service Charges in accordance with Clauses 4.3 and 5.1 and the Fifth Schedule of the said leases) set out in the Leasehold Valuation Tribunal Report dated 4 January 2008 by the Proposed Manager.

7. Value Added Tax shall be payable in addition to the remuneration mentioned in the preceding paragraph.

8. This Order shall remain in force until varied or revoked by further Order of the Tribunal and the Applicants the Respondent and the Manager shall each have liberty to apply to the Tribunal for further directions.

Limitation of Costs.

The Tribunal makes an Order under Section 20C of the 1985 Act that the Respondent's costs, if any, incurred in connection with these applications shall not be recoverable as service charges.

Reasons.

Background to the Application

Section 24 of the 1987 Act for an Order appointing a Manager.

1. The Applicants **ERNEST JOHN DAVID WARNE** and **IRENE WARNE** are the tenants of Flat 2 in the building known as Bishops Mill Apartments, West Street, Wells, Somerset BA5 2HH. The Application is dated the 16 November 2007. On the instructions of the Applicants various letters were sent by their solicitors to **KEVIN NEWTON** and **SIMPLY PROPERTY MANAGEMENT COMPANY LIMITED** concerning the status of the Respondent in a dormant Company, the position concerning directors and an Annual

General Meeting of the Respondent and request for **ERNEST JOHN DAVID WARNE** to be a director of the Respondent. The Applicants were not satisfied with the explanations given and therefore a Notice was served under Section 22 of the 1987 Act dated 4 October 2007.

2. Directions were given on 7 December 2007 requiring that Statements of Case should be prepared by both the Applicants and the Respondent together with all supporting documents. Each party was to prepare their own trial bundle. The Applicants were to ensure that the proposed Manager provided certain information about his experience of managing residential property, Professional Indemnity Insurance and the like. The directions were complied with and, in addition, the Applicants provided a complete trial bundle which included both the Applicants bundle and the Respondent's bundle.

3. The Tribunal inspected the Property on 14 February 2007 prior to the Hearing. In addition to the Tribunal members, the Applicants attended together with Mrs. Ellie Doe. The Applicants did not inspect Flat 3 or the garden to Flat 1. This included a visit to Flats 2 and 3 and the garden of Flat 1. The Property is a Grade II Listed former Millhouse built around 1840 and converted to three residential flats in 2004. Each flat is self contained with its own ground floor entrance and roof. There are no common parts in the accepted sense. The Property has a slate roof with rendered walls. Flats 1 and 3 have their own gardens. Flat 2 has a small roof terrace area.

The Law.

4. The relevant law is to be found in Section 24 of the 1987 Act which provides (inter alia) as follows:

Appointment of Manager by the Tribunal:

(1) A Leasehold Valuation Tribunal may, on an application for an Order under this section, by Order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies:

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver,

or both, as the Tribunal thinks fit.

(2) A Leasehold Valuation Tribunal may only make an Order under this section in the following circumstances, namely:-

(a) where the Tribunal is satisfied:-

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) .....and

(iii) that it is just and convenient to make the Order in all the circumstances of the case;

(ab) where the Tribunal is satisfied:

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the Order in all the circumstances of the case;

(aba) where the Tribunal is satisfied:

(i) that unreasonable variable administration charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the Order in all the circumstances of the case;

(abb) where the Tribunal is satisfied:

(i) that there has been a failure to comply with a duly imposed by or by virtue of Section 42 of 42A of this Act, and

(ii) that it is just and convenient to make the Order in all the circumstances of the case;

(ac) where the Tribunal is satisfied:

(i) that any relevant person has failed to comply with any relevant provision of a Code of Practice approved by the Secretary of State under Section 87 to the Leasehold Reform Housing and Urban Development Act 1993 (Codes of Management Practice) and

(ii) that it is just and convenient to make the Order in all the circumstances of the case; or

(b) where the Tribunal is satisfied that other circumstances exist which make it just and convenient for the Order to be made.

(3) .....

(4) An Order under this Section may make provision with respect to:

(c) such matters relating to the exercise by the manager of his functions under the order, and

(d) such incidental or ancillary matters

as the Tribunal thinks fit; and on any subsequent application made for the purpose by the manager, the Tribunal may give him directions, with respect to any such matters.

The Lease

5. The Lease of Flat 2 is dated 5 April 2005 and is made between Robert O'Malley-White (1) The Applicants (2) and the Respondent (3).

The relevant clauses in the Lease are as follows:

(a) Clause 1.1 which provides that "the Landlord intends to dispose of the three flats that comprise the building as defined below ("the flats") on leases in substantially the form of this lease".

(b) Clause 4.17 which provides that "Only to use the property as a single private dwelling occupied by one family ("use allowed") and not to use it or any part of it for any other purpose nor to allow anyone else to do so."

(c) Clause 4.20 which provides that "Not to use the property or any part of it for any of the following nor allow anyone else to do so:

Activities which are dangerous, offensive, noxious, noisome, illegal or immoral, or which are or may become a nuisance or annoyance to the Landlord or to the owner or occupier of any neighbouring property.

(d) Clause 6.5 which provides a covenant by the Manager "to provide the Services listed in the Sixth Schedule for all the occupiers of the building". The Sixth Schedule contains repairing covenants, among other obligations not relevant to these proceedings and

(e) Clause 8 which provides "The Parties agree:

"8.1. This Lease is granted on condition that the Tenant is and remains a member of the Manager."

The Hearing: The Applicants' Case

6. Mr. Callaby called Mr. Warne who said that the Applicants' Case is set out in his statement dated 9 February 2008. He sets out certain of the terms of the Lease, namely that the property could only be used as a single private dwelling occupied by one family. Also that no activities may be carried out that are dangerous, offensive, noxious, noisome ..... or may become a nuisance or annoyance to the landlord or to the owner or occupier of any neighbouring property. It became apparent that the lease to Mr. Newton dated 7 April, 2006 of Flat 3 contained a different user clause in that the words "single" and the words "occupied by one family" had been deleted.

There was, therefore, no breach of the lease of Flat 3 when it was occupied by a number of persons rather than being occupied by one family. Mr. Warne said that the occupiers, who were E.U. migrant workers, were noisy after midnight and undomesticated. The noise could last until 3 a.m. and sometimes occurred at all times before midnight. Because of noise emanating from amplified music and revelry from Flat 3 throughout three nights over the Christmas period, Mr. Warne complained to Mendip District Council Environmental Department who wrote to him on 28 December, 2007 confirming that they had written to the person or party alleged to be responsible. At an earlier date, namely 26 March, 2007, solicitors then acting for the Applicants, wrote to Mr. Newton's solicitors, bringing their

attention to the breach of the single family private dwelling restriction in the Leases of the flats, and also the noise after midnight and that the occupiers were undomesticated. There was no reply to the letter. The Tribunal accepts Mr. Warne's version of these events which demonstrate the importance of the proper management of the Property.

7. Mr Warne referred to a letter dated 19 May, 2006 sent to a Mr. Robert O'Malley-White, who was at that time the landlord of the Property. The letter concerned a leak into Flat 2 from Flat 3 and the reason for the leak was discovered by Mr. Warne who wrote a further letter to Mr. O'Malley-White dated 20 May, 2006. Mr. O'Malley-White did not reply to either letter. Mrs. Ellie Doe, a property co-ordinator, sent Mr. Warne an email dated 22 May, 2006, claiming that Mr. O'Malley-White (Bob White) had sold Flats 3 and 1 to "us and I handle the Management of it for the new company that owns it". The email confirmed contact with a plumber and asked Mr. Warne to contact Mrs. Ellie Doe if there were any further difficulties. In his reply to that email, Mr. Warne asked for the name of the Company that owned flats 1 and 3. Further correspondence continued and the leak became worse. It was only repaired on 2 June, 2006 after the intervention of the Mendip Environmental Health Department. As Mr. Newton agreed in evidence, the period of time that elapsed before the repair was carried out was unacceptable. The damage to Flat 2 was eventually put right under an insurance claim. The insurers were New India Assurance, Mr. O'Malley-White's insurer.

8. Mr. Warne told the Tribunal that the freehold of the Property was transferred to the Respondent on 22 February, 2007 well after the date set in the leases of the flats. At about the same time the Applicants received their one pound share certificate of the three pound authorised capital of the Company. The share certificate was stated to be dated 11 April, 2005. By letter dated 6 March, 2007 the solicitors then acting for the Applicants asked if one of the Applicants could be a director of the Company and they would ideally like to be a Director and Secretary of the Company, although it was expected that Mr. Newton would want to keep at least one of those positions. Mr. Warne explained that he wanted some sort of control in the administration of the Property. The request was rejected in the letter in

reply dated 12 March, 2007. Despite further requests, no position as a director was offered to either of the Applicants.

9. Mr. Warne said that the lack of a General Meeting of the Respondent or an Annual General Meeting and the fact that the Respondent was stated to be a dormant Company, was aired in correspondence dated 26 July, 2007, 1 August, 2007, 7 September, 2007, 12 September, 2007 and 17 September, 2007. Mr. Warne said that so far as he knew, nothing had been resolved.

10. Mr. Warne confirmed that, as no progress had been made and as a result the Applicants did not know who to contact over any problems with the Property, the appointment of an independent Manager was necessary. The Applicants wish Andrews Letting & Management Limited to be appointed. The Applicants are content with the fee of a minimum of one thousand pounds per annum for the block. The fee suggested by Simply Property Management Co. Ltd. is £200 per annum. Mr. Warne said the Applicants would consider any other agent. The point is that they should be an effective independent Manager. The Respondent has not put forward any other Manager.

Cross Examination by Mr. Newton

11. Mr. Warne was then cross-examined by Mr. Newton. The relevant evidence is that the occupants of Flat 3 were men and women away from home. There was no complaint as individuals. They were in a strange country. They returned at midnight and started to live. The Applicants got on very well with them. They were always very apologetic. They knew that Mr. Warne did work in the foreign community. The Applicants were sometimes exasperated by them. The Applicants tried to avoid confrontation. The Applicants did make a report to the police at Christmas when Mr. Warne was not well. There had been revelry until five in the morning. The police advised getting in touch with Mendip District Council. The police logged the complaint for their records. The situation was intolerable. Mr. Warne said that he had not been aware that the tenants were leaving. Mr. Warne confirmed that complaint had been made on 26 March, 2007 and he wanted to get a sensible management structure. Mr. Warne said that the young men in Flat 3 would come

and go in connection with their work at A.S.K. He confirmed that the Applicants had wanted to live in a quiet place. He accepted that Tesco and Lidl were nearby, as were a firm called Cadet and a tyre centre. They did not object to town life bustle, but to late night noise. According to Mr. Warne, the tyre centre was some way away. Mr. Warne agreed that legally Mr. O'Malley-White was responsible for the Property being transferred from him to the Respondent, but added that Mr. Newton and Mr. O'Malley-White did work from the same building in Wells. Mr. Newton said that the amendment in his lease about the single occupation was a matter of complaint to Mr. O'Malley-White and not the Respondent. Mr. Warne said that he supposed that was legally correct. Mr. Warne confirmed that the tenant in Flat 1 was a good neighbour and no problems had arisen. Mr. Warne was asked about the occupants of Flat 3. He confirmed they were migrant workers and, therefore, not likely to be in the flat for long. They came and went as Mr. and Mrs. Warne knew only too well. The Applicants did not follow all the comings and goings. They worked from the afternoon to late at night. On their return they would do their cleaning and enjoy their leisure time. They were worthy young men and women. Mr. Warne confirmed that when the Applicants took on the Lease, they thought similar leases would be granted for single family, long term occupation. Mr. Newton then asked about the leak from Flat 3. Mr. Warne confirmed that Mr. O'Malley-White still owned the Property at that time. He said he did not know who to deal with. He wrote to Mr. O'Malley-White on 19 May, 2006, and also received an email on 22 May, 2006 confirming that Mr. O'Malley-White (Bob White) "has sold Flats 3 and 1 to us". Mr Warne said he thought Mrs. Ellie Doe would deal with fixing the leak. Mr. Warne agreed there was no provision in the Lease for the appointment of directors of the Respondent. He also confirmed that the Lease did not contain any restrictions on occupiers apart from the single family occupation provision. Mr. Warne said that Mr. O'Malley-White did not tell him about the amendments in the leases to Mr. Newton. Mr. Warne confirmed that there were no other complaints apart from the ones so far raised in this Hearing. He did say that there was a close working relationship between Mr. O'Malley-White and Mr. Newton. They worked at the same business centre. In reply to a question

from the Tribunal, Mr. Warne confirmed that the occupation of Flat 3 by the migrant workers commenced in April, 2006 and ended in January, 2008. The turnover of occupants was quite large. The pattern for parties was erratic. The household chores were done between approximately 2am and 3am.

The Proposed New Manager

12. Mr. Callaby then called James David Tarr who confirmed that he was employed by Andrews Letting & Management Limited. He referred to the Leasehold Valuation Tribunal Report dated 4 January, 2008 which, among other things, set out Mr. Tarr's qualifications, the firm's fees, the duties to be undertaken, R.I.C.S. Code Compliance and Professional Indemnity Cover. He confirmed that the Company manages ninety separate blocks of flats comprising two thousand five hundred units. Most of them are in Bristol. Some in Cheltenham, Gloucester and Wells. The Company also has a London office. There are nine flats in Wells. The Company has managed them for eight years. He said he had read all the papers in this case but not the leases. Mr. Tarr said that for the leak referred to in these proceedings to have started on 19 May, 2006 and not be repaired until 2 June, 2006 was an excessive delay. He said that if he had handled it he would have identified the cause of the leak first and then have spoken to the complainant. He would then need to establish the type of pipe and access the flat above Flat 2. Then a plumber would be instructed to inspect and repair. The repair would have been done the same working day as the leak was reported. Mr. Tarr then referred to the nuisance issue that has arisen in this case. He said that this was "bread and butter" for him. As soon as he meets a problem like this he investigates what the breaches are. Then he looks at the lease. Then contacts the owner by telephone or letter. This phone call or letter sets out all that has happened. He sends a copy to the occupier. When the occupier gets the letter the occupier usually rings to apologise or takes some sort of action. If there is no response, then solicitors are instructed to act on behalf of the landlord under the lease. The ultimate course is forfeiture of the lease for the breach as a last resort. Mr. Tarr expressed the view that in this case where the main shareholder in Simply Property Management Co. Ltd., is also a

leaseholder, there would be a problem because of the conflict of interest. Andrews is completely independent and can write to the parties independently. Andrews would uphold the covenants in the lease.

In answer to the Tribunal, Mr. Tarr said that he had not done his A.P.C. but this is coming up. His critical review has yet to come. He has a degree in housing and development and has covered the work. His competency is shown by his ten years of experience. It is anticipated that he will get his M.R.I.C.S. in September or October of this year. The Management fee for the Property is the Minimum fee of One Thousand Pounds. He is not prepared to reduce it. The value added tax is in addition. He said that a small block can prove more difficult to manage. Mr. Tarr started with Andrews in December 1997. He is the Office Manager and works with ten other people in the Bristol office. There are four people in his particular section. Apart from the units in London, all the units managed came under Mr. Tarr. The Company abides by the R.I.C.S. Code. The code is due to be updated. The Company will review its own Code when this updating happens. Andrews would enter into terms of appointment with the Respondent in accordance with the specimen agreement in the Andrews Report dated 4 January, 2008. Mr. Tarr said that he had not been appointed by a Tribunal before, but he was sure that his Line Manager had been. The Line Manager, a Chartered Surveyor, has been in business for some twenty five years, eight of those in residential management. Bristol is the closest office to Wells.

Cross Examination by Mr. Newton

13. In cross examination by Mr. Newton, Mr. Tarr said that Andrews had five blocks of under five units under management. The range is from four in a block to two hundred and fifty. The main range is ten and twenty units. The other units in Wells are St. Johns Courts, and St. Johns Lane.

14. Mr. Newton confirmed he had no further evidence to give but that his case was shown by his cross examination of Mr. Warne.

The Respondents Case

15. In cross-examination by Mr. Callaby, Mr. Newton said he knew of the letter dated 6 March, 2007 where the Applicants sought to be director and secretary of the Respondent but that they acknowledged that Mr. Newton would want to keep at least one of these positions. He said he thought wanting both positions was not reasonable, though agreed that the wording of the letter in effect only asked for one of the positions. Mr. Newton confirmed that the letter dated 12 March, 2007 correctly conveyed his instruction that there was to be no appointments of additional directors of the Respondent. Mr. Newton confirmed that he was aware of the letter dated 26 July, 2007. Mr. Newton was shown the Certificate of Incorporation of the Respondent Company dated 16 March 2005 and it was pointed out that no A.G.M. had ever taken place. He said that was in Mr. O'Malley-White's time since Mr. Newton was not involved until January 2007 when the shares in the Respondent were transferred. Mr. Newton was referred to the letter dated 7 September, 2007 which asked whether the dormant status of the Respondent was to change and when it was intended to convene an Annual General Meeting. There was no explanation. Mr. Newton was also shown the letter dated 12 September 2007 which confirmed that the accountants now knew that the Respondent was not a dormant company, and that accounts would be prepared. It was not their job to deal with the Annual General Meeting. Mr. Newton said that at this stage Mr. O'Malley-White was no longer a director and he, Mr. Newton, was a director and had to deal with the Annual General Meeting. Mr. Newton agreed that the Respondent received the letter dated 1 November 2007 and the Notice sent with it. Both were passed to the Respondent's Solicitor. Mr. Newton confirmed that in connection with the letter dated 16 November 2007 he did not want Mr. Warne as a director of the Respondent. He also confirmed that he owns two thirds of the shares of the Respondent. He said there was nothing in the Memorandum and Articles of the Respondent requiring the appointment of an additional director. He did not see that he was in a position of conflict in being the majority shareholder in Simply Property Management Co. Ltd. the majority shareholder in the Respondent and a leaseholder. The same letter also states that a proposed time and date

for an A.G.M. will be forthcoming shortly. Mr. Newton said this has still not happened. Mr. Newton also said that he is a director of Simply Property Management Co. Ltd. Mrs. Ellie Doe is also a director and a shareholder. Mr. Newton has eighty per cent of the shares and Mrs. Doe has twenty per cent. He could not understand why the information at Companies House did not reflect this. He also confirmed that M.H.B.C. Management was only a trading name. Mr. Newton said he did not consult Mr. Warne about the appointment of Simply Property Management Co. Ltd. as the managing agents of the Property. He said he was not aware of the R.I.C.S. Management Code. He was also not aware of any management agreement between the Respondent and Simply Property Management Co. Ltd. No charges have been made so far. At Paragraph six of the Respondent's Reply/Statement of Case it is said that Simply Property Management Co. Ltd.'s minimum fee is two hundred pounds per annum which will cover the general administration/management of the Property. Mr. Newton said that his intention was not to make the charge. He also said that Mr. O'Malley-White had been an insurance broker for twenty years. He also confirmed that Mr. O'Malley-White had agreed to the amendment to the occupancy clause in Mr. Newton's leases. Mr. Newton agreed that the leak into Flat 2, which took from 19 May to 2 June to repair, should not have happened like that. He said that Mr. O'Malley-White was in charge of the Respondent then. He also confirmed that the whole repair cost was met by the Respondent's insurer. In answer to a question by the Tribunal Mr. Newton said that he picked Simply Property Management Co. Ltd. to act as the Managing Agent because he is involved in the Company and he wanted Mrs. Doe to manage the Property. Mrs. Doe looks after other property. There are one hundred properties in the portfolio. They are all in the Mendip-Shepton Mallet and Glastonbury area.

16. Mr. Newton called Mrs. Ellie Doe who confirmed that she had worked with Mr. Newton for four years in connection with his properties. They work closely and have been approached by other people to manage their properties. It was best to set up a local property agency. Her firm do not have Andrews' credentials. There are two assistants who are doing examinations. Her firm runs one hundred properties. There are ten flats in Shepton Mallet

and a block in Glastonbury. The firm has been trading since August 2007. We took two months to set up. We do try to follow the R.I.C.S. Code of Practice. Mrs. Doe said that she had tried to do her best by the Applicants. She would act independently and follow the Code of Practice.

Cross Examination of Mrs. Ellie Doe

17. Mrs. Ellie Doe said that the Company Simply Property Management Co. Ltd. carries Indemnity Cover for the business as arranged by Mr. O'Malley-White. There is no professional indemnity policy. There is no written Management Agreement with the Respondent. Mrs Ellie Doe confirmed that she is a Chartered Accountant but has no formal property training. The Property is due for redecoration in April this year. Mrs Ellie Doe said she is aware of the consultation provisions with the tenants. She said that she was reticent in doing very much pending this Tribunal Hearing. She would inform people about repairs that are urgent. She said she was aware of Section 20 of the 1985 Act, but not in great detail. Mrs. Ellie Doe said she could understand the Applicants' concerns. Mrs. Ellie Doe reaffirmed that the Company did not have professional indemnity insurance cover. She confirmed that they would not take on a larger block of flats. Mrs Doe said that she had sought an adjournment of the Applicants' application to the Tribunal to see if she could sort something out with the Applicants. She felt there could be more transparency. Mrs. Ellie Doe said the Company has a model management contract similar to the one in the Andrews Report for the Tribunal. Mrs. Ellie Doe also said that the Company has a usual charge of two hundred pounds per unit. Having consulted Mr. Newton, Mrs. Ellie Doe did not think there would be much to do with the Property. The figure of two hundred pounds was a reduced fee estimate for the Property. Mrs. Ellie Doe confirmed that she is a director and shareholder of Simply Property Management Co. Ltd. After the cross examination Mr. Newton added that he thinks Mrs. Ellie Doe does a good job. He expressed the view that if there should be a change of Managing Agent, there are other independent agents in Wells who should be approached. Local contacts are the best.

Conclusion by Mr. Callaby

18. Mr. Callaby said that the R.I.C.S. Code had been broken over the repair of the leak because the delay was unacceptable. The insurance claim was in respect of the building and Mrs. Ellie Doe acted for M.H.B.C. Management. There had been no consultation by the Respondent with the Applicants at all in breach of the Code, 19(3). The Respondent has not held an Annual General Meeting. Many letters have been written pointing this out. This lack of consultation is in breach of Clause 24(2) (ac)(1) of the 1987 Act. In connection with Clause 24(2)(b), Mr Callaby said that the conflict of interest that arises in the circumstances of this case are such as to be other circumstances which exist which make it just and convenient for an Order for the appointment of a Manager to be made. Mr. Newton is a director of the owner of the Property. He is a director and major shareholder of Simply Property Management Co. Ltd. and is a leaseholder of premises forming part of the Property. In those circumstances if a nuisance arises at the Property, there is no way the Covenants can effectively be enforced. Mr. Callaby said that Mr. Newton had shown arrogance towards the Applicants. The Applicants have come to the Tribunal as a last resort. They want a Manager independent of the owner. The Manager needs to be able to make his own decisions. Simply Property Management Co. Ltd. is not a fit and proper person to be a Manager of the Property. It has no professional indemnity insurance. There is no proper management agreement with the Respondent. Mrs. Ellie Doe does not know the details of Section 20 of the 1985 Act. Mr Callaby then referred the Tribunal to the Tribunal's Decision dated 7 July, 2006, Ms. K Medina v. 60 Sackville Road Management Company Limited, Case Number CH1/00BK/LVM/2005/0004 and handed copies to the Tribunal. He said that a Manager called Jacksons had fallen out with the Directors of 60 Sackville Road Management Company Limited. Its director, Ms. Medina had applied to have Jacksons appointed by the Leasehold Valuation Tribunal. The Tribunal dismissed the allegations made by Ms. Medina but because of the dispute, still appointed a Mr. G. Pickard of Jacksons as the Leasehold Valuation Tribunal Manager.

Section 20C of the 1985 Act Application

Mr. Callaby referred to the Section 20C of the 1985 Act application and pointed out the Content of the letter dated 26 July, 2007 about the appointment of a director and secretary of the Respondent and the lack of any general meeting. The only reply to the Section 22 notice was from the Respondent's solicitors stating that Mr. Newton did not agree to Mr. Warne being a director of the Respondent. Even now no general meeting has been arranged. In those circumstances it is unreasonable for the Applicants to bear any of the Respondent's costs as service charges. Mr. Callaby indicated that he had selected Andrews as the Manager because he has acted for Andrews and their clients and therefore knows that they are competent. No comparable firm comes to mind in Wells. He has been working in Wells since 1988 and no alternative has been put forward by the Respondent. Mr. Warne is happy with the level of charges.

Conclusion by Mr. Newton

19. Mr. Newton said that he had purchased the flats for his children. The top flat is intended for his son in the future and the bottom flat for his daughter. He had agreed the terms of the leases with Mr. O'Malley-White. In June 2007 everything to do with the Respondent was transferred over to him. He tried to get everything concerning the Respondent sorted out. Mr. O'Malley-White "told us to sign saying we are coming off and you are going on the Respondent". He said that he had used his best endeavours of run things properly. It is very simple. The Property had been done up before Mr. Newton bought it. Mr. Warne has done some repairs himself. It is a lovely property and in a good position in Wells. He disputes being arrogant. He spoke to the Applicants over coffee recently and it is a pity that there had been no communication before. Consideration should be given to other local agents. His Solicitors had written to say there would be an Annual General Meeting of the Respondent. This would be at the end of the financial year. Mr. Newton said he was quite happy to discuss a directorship of the Respondent with Mr. Warne. He was not seeking any costs of these proceedings. He said that suitable local agents would be S.S.F. Letting, Gill Meadows and Jeans Holland.

20. CONSIDERATION.

1. The Lease ("the lease") dated 5 April, 2005 provides for the Respondent to be the Manager of the Property and places certain responsibilities on the Respondent. As the Respondent is a limited company it does not matter who the directors or shareholders are so far as the Respondent's liabilities are concerned. Therefore the responsibility for the leak referred to in the evidence fell to the Respondent. Clearly the Respondent failed in its responsibilities. As was agreed by Mr. Newton the time taken was unacceptable. The problem was not grasped promptly and this constituted a breach of paragraph 14.7 of the R.I.C.S. Code of Practice under Section 24 (2) (ac) i of the 1987 Act.

2. The Lease provides at Clause 8.1 that the Applicants are and remain a member of the Respondents. Evidence that this has happened emerged in February 2007 when the £1 Share Certificate arrived with the Applicants. Thereafter there were repeated requests for a general meeting of the Respondent to take place. This has never happened. At some time Simply Property Management Co. Ltd. was appointed Managing Agents of the Property. Consultation should have taken place between the Respondent and the Applicants about a General Meeting of the Respondent and about the appointment of the Managing Agents. The lack of so doing is a breach of Clause 19 (3) of the R.I.C.S. Code of Practice under Section 24 (2) (ac) i of the 1987 Act.

   In both these breaches the Tribunal finds that it is just and convenient to make the Order appointing a Manager and Receiver in all the circumstances of the Case because there is no independent Management of the Property in place at the present time. The Applicants are in a vulnerable position and the Property needs to be managed by a wholly independent body.

3. Mr. Newton is the leaseholder of flats 1 and 3 at the Property. He is a director and shareholder of the Respondent. He is a director and major shareholder of Simply Property Management Co. Ltd. This has to be an unacceptable conflict of interest,

there being no independent voice for the Applicants. Mr. Newton could find himself in direct conflict with the Respondent as the freeholder and/or Simply Property Management Co. Ltd. as the Managing Agent. The Tribunal is satisfied that this position constitutes other circumstances within S24 (2) (b) of the 1987 Act for an Order for the appointment of a Manager and Receiver to be made.

4. The Tribunal considered who should be appointed as the Manager and Receiver. It is clear that Simply Property Management Co. Ltd. could not be appointed because of the conflict of interest that would arise. Also the Company did not demonstrate that it has the expertise to carry out the task. Importantly the Company does not have Professional Indemnity Cover. There can be no doubt that Andrews Letting & Management Limited do have the expertise to carry out this management, as is demonstrated in the evidence given to the Tribunal and the contents of the Leasehold Valuation Tribunal Report dated 4 January, 2008 prepared by Andrews. It was therefore decided to appoint Andrews Letting & Management Limited as Manager and Receiver of the Property in accordance with Section 24 (1) of the 1987 Act.

Section 20C of the 1985 Act

5. The Tribunal is satisfied that the position taken by the Respondent on the various issues raised in this Case has caused the Applicants to make this Application. It is therefore just and equitable that the Tribunal makes an Order under Section 20C of the 1985 Act that the Respondent's costs, if any, incurred in connection with these Applications shall not be recoverable as Service Charges.

DATED this Nineteenth day of March 2008

T.M. Pearce

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CHAIRMAN

A Member of the Southern Leasehold Valuation Tribunal
appointed by the Lord Chancellor